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(UNITED STATES PATENT AND TRADEMARK OFFICE REGISTRATION #52,808)

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Assistant Commissioner for Patents
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Before the United States Patent and Trademark Office

Regarding:

Application Number: **10/628,891**

Filing Date: 28 July 2003

Applicant: Robert L. Demchick

Title: Recreational Vehicle Equipped with Exterior Water Outlet

Art Unit: 3753

Examiner: A. Michael Chambers

Appeal Brief
(Amended)

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(i) *Real party in interest*

The party in real interest in this matter is the applicant, Robert L. Demchick.

(ii) *Related appeals and interferences.*

No related appeals and interferences are known to the appellant or the appellant's legal representative. There is no assignee.

(iii) Status of claims .

Claims 1-17 have been cancelled. Claims 18-28 are pending and the rejection of those claims is appealed. More specifically:

Claim 18 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 19 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 20 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 21 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 22 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 23 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 24 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 25 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 26 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 27 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

Claim 28 is pending, rejected under U.S.C. §103 (a) and that rejection is appealed.

(iv) *Status of amendments* .

No amendment has been filed subsequent to final rejection.

(v) Summary of claimed subject matter.

In short, the intention claimed in the only independent claim is a recreational vehicle (RV) equipped with a plumbing system including an outlet for potable water which is attached on the exterior of said recreational vehicle on the starboard side of said recreational vehicle. As explained in the specification (including paragraphs [0018]-[0020]), many RV users spend a large amount of time outdoors, in proximity to the recreational vehicle. Campsites which were designed for use with recreational vehicles are typically configured in anticipation that activities such as cooking and eating will be done on the right side of the RV. However, no previously disclosed RVs provide a convenient means for obtaining potable water on the outside of the vehicle in a convenient location.

The only independent claim follows, annotated (in italics) with references to at least one place in the specification describing or illustrating mentioned features.

A recreational vehicle equipped with a plumbing system comprising, in communication with each other,

a city water inlet for potable water [0034](*page 13*)*Fig 2b as 105* on the port side of said recreational vehicle,

a storage tank for potable water [0033] (*page 12*), *Fig. 1 as 4*, and an outlet for potable water [0030] (*page 11*), [0034](*page 13*), *Fig 2a as 100* which is attached on the exterior of said recreational vehicle on the starboard side of said recreational vehicle.

(vi) *Grounds for rejection to be reviewed on appeal.*

- (i) No rejection is under 35 U.S.C. 112, first paragraph
- (ii) No rejection is under 35 U.S.C. 112, second paragraph
- (iii) No rejection is under 35 U.S.C. 102
- (iv) Regarding rejections under 35 U.S.C. 103:

Claims 18-28 were rejected under 35 U.S.C. §103 (a) as unpatentable over Reid
(United States Patent 3594825) in view of Eisner (United States Patent 2837109).

(vii) *Argument.*

Arguments regarding all claims are presented, followed by arguments pertaining to individual claims.

ARGUMENTS REGARDING ALL CLAIMS (i.e., Claims 18 — 28)

Applicant respectfully submits that three types of error have been made in the final rejection of all of the claims. Any of these errors would render the rejections inappropriate. Those errors are:

Examiner has failed to meet the standards required for establishment of a prima facie case for rejection of claims under 35 U.S.C. §103. More specifically, the Examiner has failed to cite a motivation to combine references.

The references combined are nonanalogous arts and the problems solved in the references are neither the same as, nor analogous to, the problems solved by the invention disclosed in application 10/628,891.

Combination of Eisner and Reid would not yield the invention disclosed.

Regarding the lack of cited motivation:

No motivation is found in Eisner or in Reid for combining the teachings of those references. No other reference is cited indicating such motivation. When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the Examiner to explain why the combination of the teachings is proper. *Ex parte Skinner* , 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986) **MPEP § 2142**.

The showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc. .*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). The showing of a suggestion, teaching, or motivation to combine the prior art references must be clear and particular. Broad statements about the teaching of multiple references, standing alone, are not evidence.

Dembiczak, 175 F.3d at 1000, 50 USPQ2d at 1617. "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device." *Ex parte Chicago Rawhide Mfg. Co. .*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984) **MPEP § 2144.04 VI C** "The combination of elements from non analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill

in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself.” *In re Oetiker*, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992).

The invention described in application 10/628,891 is one of those in which an important aspect of the invention process was the recognition of a long-standing, unrecognized problem.

Although the mechanical solution was fairly simple, there is no indication cited that the problem solved was recognized in the art. The nature of the use of the invention disclosed by Eisner and the nature of the use of the invention disclosed in Application 10/628,891 would indicate that the reason for the placement of the water inlet and mixture outlet of Eisner could not possibly be the same or analogous to the reason for the placement of the water inlet and water outlet of the invention disclosed in Application 10/628,891. Eisner was clearly not addressing the matters of convenience or sanitation based on camping site and RV configurations addressed by the invention disclosed in 10/628,891. Those issues are discussed in detail in Application 10/628,891.

During a telephonic interview on 23 January 2006, the Examiner explained that the motivation is, as stated in the application, the increased convenience of the invention. Examiner agreed that no motivation was found or cited in any reference, but that the motivation *mentioned in the application* was sufficient for the rejection. The applicant respectfully disagrees.

Regarding the combination of references from nonanalogous arts:

The waterproofing material pumping systems art is a nonanalogous art to the recreational vehicle art to which the invention disclosed in application 10/628,891 pertains. Those skilled in the

recreational vehicle art would not be reasonably expected to look to waterproofing material pumping systems to solve the sort of problem of user convenience and sanitation based on campsite and RV configuration addressed in application 10/628,891.

In fact even if one in the recreational vehicle art did look to the waterproofing material pumping systems art, the invention disclosed by Eisner was not addressing the same issues as addressed by the invention disclosed in application 10/628,891.

“In resolving the question of obviousness under 35 U.S.C. 103, we presume full knowledge by the inventor of all the prior art in the field of his endeavor. However, with regard to prior art outside the field of his endeavor, we only presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved.” *In re Wood*, 202 USPQ 171, 174 (C.C.P.A. 1979).

The Examiner concludes that the arts are analogous based on the fact that both are “wheeled fluid systems.” This category is too broad to define an analogous area of art. That broad category would encompass not only waterproofing material pumping systems and recreational vehicles but certain irrigation equipment, toy fire trucks, insulated water containers with wheels (such as those used by sports teams), port-a-potties, many household dehumidifiers, the space shuttle, automobiles equipped with windshield washers, cement mixer trucks, rolling mop buckets, and gas grills. That is clearly too broad.

The leap from waterproofing material pumping systems to recreational vehicles is greater than leaps that have been deemed too great for arts to be considered analogous. One type of filter has been held not to be analogous art to another type of filter. *Ex parte Re Qua*, 56 USPQ 279, 280 (Pat. Off. Bd. App. 1942). One type of memory circuit in computers has been held not to be analogous art to another type of memory circuit in computers. *Wang Labs., Inc. v. Toshiba Corp.*, 26 USPQ 2d 1767, 1773 (Fed. Cir. 1993).

In arguing that the Reid and the Eisner references are analogous, the Examiner depends on the alleged fact that both are in USPTO classification 137. However, USPTO classification is of limited value in determining analogy **MPEP § 2144.01**. Moreover, it is respectfully submitted that the current classification for Eisner is 137/267; 137/565.17; 137/899, while the current classification for Reid is **526/156** ; 502/132; 526/348; 526/352.

Although the invention disclosed by Eisner and the invention disclosed in application 10/628,891 both include liquid handling systems, the problem solved by the invention disclosed in application 10/628,891 is quite different from the problem solved by the invention disclosed by Eisner. Both address problems quite different from those addressed in application 10/628,891.

Regarding the fact that combination of Eisner and Reid would not yield the invention disclosed:
Even the combination of Eisner and Reid would not yield the invention disclosed in application 10/628,891. For example, the water inlet of Eisner is on the starboard side and the mixture outlet of Eisner is on the port side. In application 10/628,891, the water inlet is on the port side and the water outlet is on the starboard side. Which side the inlet and outlet are disposed on is critical to

the function of the invention disclosed in application 10/628,891. The importance of which side the inlet and outlet are on is discussed at length in application 10/628,891. In the Office Action mailed 13 December 2005, it is held (underlined portion of page 4) that port and starboard are arbitrary designations for a given vehicle in that left and right depends on whether the vehicle is viewed looking forward or backward. Applicant respectfully maintains that that defies the common meanings for “port” and “starboard.” Dictionaries make it clear that “port” and “starboard” are unambiguously oriented for a forward facing observer. A few on-line references include:

“right-hand side: the direction to the right of somebody facing the front of a ship or aircraft”

<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861714568>, accessed 31 August 2006

“noun the side of a ship or aircraft on the right when one is facing forward. The opposite of PORT.”

http://www.askoxford.com/concise_oed/starboard?view=uk, accessed 31 August 2006

“the right side of a ship or aircraft looking forward -- compare PORT”

<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=starboard>, accessed 31 August 2006

“the right side of a ship or aircraft as you are facing forward NOTE: The opposite is port.”

<http://dictionary.cambridge.org/define.asp?key=77586&dict=CALD>, accessed 31 August 2006

Similarly, when referring to the “right” or “left” side of a vehicle, there is no ambiguity that those terms refer to the right and left of a forward facing observer.

Eisner describes his Fig. 3 (col 1, line 63) as a “left side elevational view.” That puts Eisner’s **27** on the left side of the front of the Waterproofing Material Pumping Apparatus. Eisner’s **27** is clearly described as being for outgoing waterproofing material (col. 2, lines 21-26).

ARGUMENTS PERTAINING TO INDIVIDUAL CLAIMS

Regarding Claim 19:

The Office Action does not address the limitations that claim 19 has in addition to the limitations of independent claim 18.

Regarding Claim 20:

The Office Action does not address the limitations that claim 20 has in addition to the limitations of independent claim 18.

Regarding Claim 21:

The Office Action does not address the limitations that claim 22 has in addition to the limitations of independent claim 18.

Regarding Claim 22:

The Office Action does not address the limitations that claim 22 has in addition to the limitations of independent claim 18.

Regarding Claim 23:

The Office Action does not address the limitations that claim 23 has in addition to the limitations of independent claim 18.

Regarding Claim 24:

The Office Action does not address the limitations that claim 24 has in addition to the limitations of independent claim 18.

General Note about Office Action Discussion of Claims 25-28:

There is some confusion regarding claims 25 — 28 in the Office Action. The “faucet” mentioned in regards to “claim 28” is a limitation of claim 27, not 28. The “drinking fountain” mentioned in regards to “claim 27” is a limitation of claim 25, not 27.

Regarding Claim 25:

Eisner does not disclose any drinking fountain. Moreover, the specific part cited in the Office Action as “readable on a drinking fountain,” Eisner’s **28**, is a water intake fitting. Although other parts of the Eisner disclosure are outlets for waterproofing, they are structurally distinct from drinking fountains.

Regarding Claim 27:

The specific part cited in the Office Action as being a faucet, Eisner’s **28**, is not a faucet. Furthermore, in Eisner’s **28** does not equip an “outlet for potable water.” For that matter, Eisner’s **28** does not equip any outlet.

Regarding Claim 28:

The Office Action does not address the limitations that claim 28 has in addition to the limitations of independent claim 18.

(viii) Claims Appendix.

The claims under appeal are:

Claim 18. A recreational vehicle equipped with a plumbing system comprising, in communication with each other,

a city water inlet for potable water on the port side of said recreational vehicle,

a storage tank for potable water, and

an outlet for potable water which is attached on the exterior of said recreational vehicle on the starboard side of said recreational vehicle.

Claim 19. A recreational vehicle as in claim 18 in which said recreational vehicle is a motorhome.

Claim 20. A recreational vehicle as in claim 18 in which said recreational vehicle is a fifth-wheel type travel trailer.

Claim 21. A recreational vehicle as in claim 18 in which said recreational vehicle is a travel trailer other than a fifth-wheel type travel trailer.

Claim 22. A recreational vehicle as in claim 18 in which said recreational vehicle is a conversion bus.

Claim 23. A recreational vehicle as in claim 18 in which said recreational vehicle is a pick-up camper.

Claim 24. A recreational vehicle as in claim 18 in which said recreational vehicle is a tent trailer.

Claim 25. A recreational vehicle as in claim 18 in which said outlet for potable water is equipped with a drinking fountain.

Claim 26. A recreational vehicle as in claim 18 in which said outlet for potable water is equipped with a hose connection.

Claim 27. A recreational vehicle as in claim 18 in which said outlet for potable water is equipped with a faucet.

Claim 28. A recreational vehicle as in claim 18 further comprising a water pump in communication with said city water inlet for potable water, said storage tank and said outlet for potable water.

(ix) *Evidence Appendix* . none

(x) *Related proceedings appendix.* none

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Paul H. Demchick", written over a series of horizontal lines.

Paul H. Demchick
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